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OFFICE OF PETITIONS

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| In re Application of | : |
| Lorraine Faxon Meisner | : DECISION GRANTING |
| Application No. 10/614,768 | : PETITION |
| Filed: 8 July, 2003 | : |
| Attorney Docket No. 41758-P002D1C1 | : |

This is a decision on the petition styled under 37 CFR 1.182, filed on 1 December, 2003, which is treated as a petition requesting that the above-identified application, without drawings, be accorded a filing date of 8 July, 2003.

The application was filed on 8 July, 2003, without drawings.¹ Accordingly, on 24 October, 2003, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. In response, on 1 December, 2003, petitioners filed a preliminary amendment accompanied by three (3) sheets of drawings and the present petition.

Petitioners concede that the drawings were inadvertently omitted when the present application was filed, but state that the drawings were present in a prior-filed application incorporated by reference in the present application.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 74-101 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²MPEP 601.01(f).

The petition is granted. Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted on 1 December, 2003, will be credited to counsel's deposit account, No. 23-2426.

The "Notice of Incomplete Nonprovisional Application" mailed on 24 October, 2003, was sent in error and is hereby vacated.

The application will be processed and examined using only the application papers filed on 8 July, 2003.

Obviously, in view of the incorporation by reference of the prior application, The three (3) sheets of drawings are not new matter if they were a part of the disclosure of the prior application.

The three (3) sheets of drawings will be reviewed by the examiner for new matter.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 8 July, 2003, using only the application papers present on filing, and for an indication on the bib-data sheet that no (0) sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.



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